

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
Eighteenth Region

NEUMANN BROTHERS, INC.

Employer

and

LABORERS' INTERNATIONAL UNION OF  
NORTH AMERICA, LOCAL UNION NO. 177,  
AFL-CIO<sup>1</sup>

Petitioner

Case 18-RC-16422

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

---

<sup>1</sup> The name of Petitioner appears as amended at the hearing.

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.<sup>2</sup>

3. The labor organization involved claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The Petitioner seeks an election in a unit consisting of the laborers employed by the Employer in Jasper County, Iowa, excluding office clerical employees, guards and supervisors as defined in the Act, as amended, and all other employees. The Employer contends that it has no laborer employees currently employed in Jasper County; that it has no bids outstanding for work in Jasper County; and that it does not intend to bid on work within that area in the future, except at the Maytag Modernization Project in Newton, Iowa. Therefore, the Employer contends that the appropriate unit should be limited to all laborers it employs at the Maytag Modernization Project in Newton, Iowa.

The Employer currently recognizes Petitioner as the collective-bargaining representative for laborers it employs in Polk County, which is where Des Moines—the largest city in the State of Iowa—is located. The Employer has collective-bargaining agreements with other construction unions, including contracts that include Jasper

---

<sup>2</sup> The Employer, Neumann Brothers, Inc., an Iowa corporation with an office and place of business in Des Moines, Iowa, is a commercial general contractor engaged in the building and construction industry. The Employer annually purchases and receives at its facility and job sites in Iowa, goods and materials valued in excess of \$50,000 directly from points outside the State of Iowa.

County as part of the geographical jurisdiction of the unions. The Employer's current contract with Petitioner does not, however, include work performed by the Employer in Jasper County. The Employer, a large commercial general contractor, performs in excess of 90 percent of its work in Polk County. Other projects outside of Polk County have included jobs in Pella, Marshalltown, Ames and Fort Dodge, all in Iowa but none in Jasper County. At least some of the projects identified as being outside Polk County were completed years ago.

According to the Employer, except for ongoing work at Maytag Corporation in Newton, Iowa, it has performed no work in Jasper County in the last few years; it has no current bids pending to perform work in Jasper County; and it does not intend to bid on work in Jasper County in the future. While the Employer's executive vice president and chief of operations did not give a reason for it, his position was clear that the Employer had no intention to bid work in Jasper County, except at Maytag. He did indicate that the Employer might make an exception for a current customer, but stated no such work was currently contemplated. With regard to the Maytag project, the record establishes that the Employer has engaged in work at Maytag Corporation located in Newton (Jasper County), Iowa for four to five years. The Employer has employed individuals in various crafts, including laborers. The work is part of a long-term effort by Maytag to modernize its facility, which consists of numerous plant, warehouse and other buildings throughout Newton. The Employer either negotiates directly with Maytag or submits bids as new projects develop. While work at Maytag has been ongoing, there have been times when a particular project has been completed and no other work has been available, and then the Employer's employees—including laborers—have been laid off

or moved to Employer projects outside of Jasper County. The record reflects no work by the Employer for anyone in Jasper County other than Maytag as part of its modernization program, with two exceptions. First, the Employer is remodeling part of a building that was donated by Maytag to a community college. However, the part of the building that the Employer is involved in is apparently still used by Maytag. Moreover, according to the Employer, its contract is with Maytag and not the community college. In addition, the Employer managed a project involving Thombert Company in Newton, pursuant to a request by a client (not Maytag), and did utilize some of its employees on the project, including laborers. The Thombert project was about three years ago.

The Employer currently employs two laborers. They are involved in a display project scheduled to be completed on March 31, 1999. However, the Employer does anticipate other projects at Maytag, and, in fact, one current employee was told by the job superintendent that two new projects are scheduled for April. One of the two current employees has worked at Maytag for four years. The other current employee has worked at Maytag for over two years. Both, however, have been assigned to other jobs outside of Jasper County when work at Maytag has been slow, although both have apparently spent most of their work time at Maytag. Both have worked on various projects at Maytag and have worked for one of two superintendents, who both parties agree are 2(11) supervisors. Finally, both are members of Petitioner, and have been paid the wages and enjoyed the benefits set out in Petitioner's contract with the Employer covering Polk County. The Employer, however, has paid other individuals employed as laborers at Maytag wages different from those set out in Petitioner's contract, and has provided no fringe benefits. It appears that if the Employer hires a

member of Petitioner to work at Maytag, it pays contractual wages and benefits; and that if the Employer hires employees “off the bank,” it does not.

It is the role of the job superintendent assigned a particular project at the Maytag site to determine the size of the employee complement, to supervise the work, and to complete it. The superintendent decides which trades he needs and the number of employees (with guidance from the bid documents); sets hours of work; obtains proper equipment; and, at least with regard to hires who are not members of Petitioner, sets wage rates (within corporate guidelines). The superintendent also determines when and whom to lay off and which employees to move to another project (whether at Maytag or elsewhere).

Based upon the foregoing and the record as a whole, I conclude that the laborers employed by the Employer at Maytag Corporation in Newton, Iowa constitute an appropriate unit, and reject the Union’s position that the unit should encompass Jasper County. In doing so, I note that there is no evidence that the Employer has or will bid on projects other than at Maytag; and that the Maytag projects have their own superintendents, who decide on the composition of the crews, assign work, and when a project is completed either lay off or transfer employees to other job sites either within Maytag or outside Jasper County. I find, therefore, that the Maytag project functions as an independent and autonomous operation. Longcrier Co., 277 NLRB 570 (1985). The fact that the Employer might accommodate a current customer’s request to perform work in Jasper County does not warrant ordering an election in the unit requested by Petitioner. Davey McKee Corp., 308 NLRB 839 (1992).

Petitioner contends that the Daniel formula<sup>3</sup> for voting eligibility should be applied. In its post-hearing brief, the Employer conceded that if an election were directed, the Daniel formula is appropriate. As the Employer is engaged in the construction industry, it is appropriate to determine voter eligibility based on the Daniel formula. Johnson Controls, Inc., 322 NLRB 669, 672-673 (1996).

Accordingly, I shall conduct an election in the following appropriate unit:

All laborers employed by the Employer at its Maytag construction projects in Newton, Iowa; excluding office clerical employees, guards and supervisors as defined in the Act, and all other employees.

#### **DIRECTION OF ELECTION**<sup>4</sup>

An election by secret ballot will be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the Notice of Election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date below, including employees who did not work during that period because they were ill, on vacation or temporarily laid off. This includes laid-off employees who have been employed for 30 days or more within the 12 months preceding the date below, or if they had some employment in those 12 months and have been employed for 45 days or more within a 24-month period immediately

---

<sup>3</sup> Daniel Construction Co., 133 NLRB 264 (1961), as modified at 167 NLRB 1078 (1967). See also Steiny and Company, Inc., 308 NLRB 1323 (1992).

<sup>4</sup> Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 - 14th Street, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by **March 26, 1999**.

preceding the date below; but excluding those employees who have been terminated for cause or who quit voluntarily prior to the completion of the last job for which they were employed. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period, and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are persons who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced.<sup>5</sup>

Those eligible shall vote whether or not they desire to be represented for collective-bargaining purposes by Laborers' International Union of North America, Local Union No. 177, AFL-CIO.

---

<sup>5</sup> To ensure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. Excelsior Underwear Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Co., 394 U.S. 759 (1969). Accordingly, it is directed that two copies of an election eligibility list containing the *full* names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within seven (7) days of the date of this Decision and Direction of Election. North Macon Health Care Facility, 315 NLRB 359 (1994). The Regional Director shall make the list available to all parties to the election. In order to be timely filed, this list must be received in the Minneapolis Regional Office, 234 Federal Courts Building, 110 South Fourth Street, Minneapolis, MN 55401, on or before **March 19, 1999**. No extension of time to file this list may be granted by the Regional Director except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

Dated at Minneapolis, Minnesota, this 12th day of March, 1999.

/s/ Ronald M. Sharp

---

Ronald M. Sharp, Regional Director  
Eighteenth Region  
National Labor Relations Board

Index # 440-3375-3750